

new number

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15302

RECORDATION NO. 15302 FILED 15302

APR 17 1989 - 9 45 AM

INTERSTATE COMMERCE COMMISSION
INTERSTATE COMMERCE COMMISSION

April 18, 1989

9-109A001

The Honorable Noretta R. McGee
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Date 4-19-89
Fee \$ 1300
CC Washington, D. C.

Dear Secretary McGee:

Enclosed for recordation, under the provisions of 49 U.S.C. §11303(a) and the regulations thereunder, are an original and five counterparts of a Locomotive Lease Agreement, dated as of April 15, 1989, between General Electric Company ("Lessor") and Buffalo & Pittsburgh Railroad Inc. ("Lessee"), a primary document.

The names and addresses of the parties to the enclosed Locomotive Lease Agreement are as follows:

LESSOR: General Electric Company
Transportation Systems Business
Operations
2901 East Lake Road
Erie, PA 16531

LESSEE: Buffalo & Pittsburgh Railroad Inc.
201 North Penn Street
Punxsutawney, PA 15767

APR 19 8 59 AM '89
MOTOR OPERATING UNIT

A general description of the railroad locomotive covered by the enclosed document is attached hereto as Schedule I.

The undersigned is the attorney-in-fact of General Electric Company. Please return the original of the enclosed document to John K. Maser III, Esquire, Donelan, Cleary, Wood & Maser, P.C., Suite 850,

Counter parts for Ward

[Handwritten signature]

Letter to Secretary McGee
Page Two
April 17, 1989

1275 K Street, N.W., Washington, D.C. 20005-4006 or to the bearer hereto.

Also enclosed is a remittance in the amount of \$13.00 for the required recording fee.

A short summary of the document to appear in the index follows:

PRIMARY DOCUMENT

Locomotive Lease Agreement, dated as of April 15, 1989, between General Electric Company ("Lessor") and Buffalo & Pittsburgh Railroad Inc. ("Lessee"), relating to one (1) General Electric Super 7 B-23 Diesel Electric Locomotive, bearing identification mark "GECX" and Road No. 2000.

Respectfully submitted,

GENERAL ELECTRIC COMPANY

BY:



John K. Maser III
Attorney-In-Fact

004/207-B
Enclosures

Schedule I

Description of Locomotive

<u>Type of Equipment</u>	<u>Number</u>	<u>Identifying Mark</u>	<u>Road Number</u>
General Electric, Super 7 B-23 Diesel Electric Locomotive	1 locomotive	Marked "GECX" on both sides of locomotive	2000

LOCOMOTIVE LEASE AGREEMENT

16301

RECORDATION NO. _____ FILED 1425

This Lease is made as of the 15th day of April, 1989, between General Electric Company, a corporation of the State of New York (hereinafter "Lessor") and Buffalo & Pittsburgh Railroad Inc., a corporation of the State of Delaware, (hereinafter referred to as the "Lessee").

APR 19 1989 9 52 AM
INTERSTATE COMMERCE COMMISSION

WHEREAS, Lessor desires to lease certain locomotives to Lessee and obtain, with the cooperation of Lessor, information relating to the performance of said Locomotives in Lessee's revenue service, and

WHEREAS, Lessee desires to lease such Locomotives for use in its revenue service and to cooperate with Lessor in evaluating the performance of said locomotives,

NOW THEREFORE, intending to be legally bound, the parties hereto agree as follows:

1.0 Equipment

Lessor agrees to furnish and lease to Lessee, and Lessee agrees to accept and use under the terms and conditions set forth herein, the locomotives described in Annex 1 hereto (hereinafter referred to as "Locomotives").

2.0 Delivery

Delivery of the Locomotives shall be made at an agreed-upon point on Lessee's property. The estimated date of delivery for the Locomotives described in Annex 1 is April 16, 1989.

3.0 Rentals, Access and Evaluation

3.1 Lessee agrees to pay to Lessor, as rent for each of the Locomotives, the sum of \$1.00 during the term of this Lease.

3.2 Lessee agrees to cooperate with Lessor in obtaining and providing information relating to the performance of the Locomotives in Lessee's operations. Such cooperation shall include providing Lessor's personnel reasonable access to Lessee's property and the Locomotives (including access to the Locomotives while in operation in revenue service) for the purpose of making evaluations.

4.0 Alterations, Maintenance and Repair

4.1 Except for alterations or changes required by law or regulatory authorities, or as otherwise expressly permitted by Lessor hereunder, the Lessee shall not effect any change in the design, construction or specifications of the Locomotives, body or electrical equipment, or components thereof, without the prior authority and approval of the Lessor.

4.2 Lessee shall, during the term of this Lease, at its expense keep the Locomotives in good repair and operating condition (reasonable wear and tear excepted), applying the manufacturer's recommended maintenance standards and procedures. Lessee shall also assume all operating expenses including the costs of fuel, lubricating oils, grease and other supplies necessary for the proper operation of the Locomotives. These supplies must be specified and approved in advance by Lessor.

4.3 No Warranty

Lessor makes NO WARRANTIES, WHETHER EXPRESS, IMPLIED, ORAL, WRITTEN OR STATUTORY, INCLUDING BUT NOT LIMITED TO MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, concerning the Locomotives furnished hereunder to Lessee. Upon delivery by Lessor to Lessee, Lessee shall accept each Locomotive AS IS and WITH ALL FAULTS.

5.0 Patents

Lessor guarantees that it is the owner of the Locomotives, and that such Locomotives have been manufactured and modified under patents which Lessor is entitled to use. Lessor will save, indemnify and keep harmless Lessee, its officers, agents and employees, from and against any and all claims of patent infringement which may arise in connection with the use of any of the Locomotives.

6.0 Use and Operation

- 6.1 The Lessee agrees to comply in all respects with all laws of the jurisdictions in which its operations involving the Locomotives may extend and with all lawful rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Locomotives, to the extent that such laws and rules affect the operation or use of the Locomotives.
- 6.2 Lessee will use and operate the Locomotives in conformance with all applicable manufacturer recommendations.
- 6.3 Lessee agrees to use the Locomotives exclusively within its own service and within the boundaries of the United States, except as specifically agreed to in writing by Lessor, which agreement will not be unreasonably withheld.
- 6.4 Charges levied by third parties for use of their rights of way, track, storage or hauling are the responsibility of the Lessee.

7.0 Taxes and Liens

The Lessee will pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any debt, tax, charge, assessment, obligation or claim against the Lessee which, if unpaid, might become a lien or charge upon or against the title of the Lessor to the Locomotives or which might have the effect of altering in any way the rights of the Lessor in such Locomotives under this Lease; but the Lessee shall not be required to pay or discharge any such debt, tax, charge, assessment, or obligation or claim so long as the validity or amount thereof shall be contested in good faith and by appropriate legal or administrative proceedings, unless such contest will, in the judgment of the Lessor, materially endanger the rights or interests of the Lessor.

8.0 Loss and Damage

- 8.1 Lessee shall bear the risk of loss (including theft) or damage to any Locomotive from the date of delivery through return of the Locomotive by Lessee to Lessor in accordance with the provisions of Section 14 below, regardless of the cause of such loss or damage, except to the extent such loss or damage is caused directly by the negligence of Lessor. Lessee shall notify Lessor immediately of any accident, collision, loss, theft or damage involving any Locomotive, to be followed promptly by a detailed written report to Lessor. Lessee shall provide all

assistance reasonably requested by Lessor in the investigation, defense or prosecution of any resulting claims or suits.

- 8.2 In the event a Locomotive is lost or damaged beyond repair, Lessee shall so notify Lessor. Within thirty days of such notification, Lessee shall pay to the Lessor the casualty value of such Locomotive, which for the purpose of this Lease shall be \$850,000. Upon payment of the foregoing amount, title to the Locomotive shall vest with Lessee and this Lease will terminate.
- 8.3 In the event a Locomotive is partly damaged, the Lessor may elect, at its sole discretion, to repair the Locomotive (or have the Locomotive repaired). If the Lessor so elects, the Lessee shall be responsible for the reasonable cost of such repairs, and shall reimburse Lessor therefor promptly upon submission of invoices.
- 8.4 Lessee shall, at all times, at its own expense, cause to be carried and maintained with respect to liabilities assumed by Lessee under this Lease (i) all risk insurance on Locomotives and (ii) public liability insurance with respect to third party personal injury and property damage, in such amounts (subject to customary and prudent deductibles) and against such risks and with such insurance companies as is consistent with prudent railroad industry practices; provided, however, that, if Lessee customarily self-insures against such risks, Lessee may self-insure to the extent that such self-insurance is consistent with prudent railroad industry practices.

9.0 Indemnity

The Lessee hereby agrees to indemnify, reimburse, and hold the Lessor (and any assignee or successor in title of Lessor) harmless from any and all losses, damages, costs (including attorney's fees), injuries, claims, demands, suits, judgments or causes of action whatsoever (hereinafter referred to as the "Liabilities") arising on account of, or caused in any way by, the Locomotives or the use or operation thereof, except to the extent directly caused by the negligence of Lessor including, but not limited to, latent defects in the Locomotives and design defects with respect to the Locomotives. Lessee will notify Lessor immediately of any Liability, as defined above, and permit Lessor to appear in any proceeding to defend its interests as they may be.

10.0 Liability of Lessor

- 10.1 Lessor shall have no liability to Lessee arising out of the furnishing of any Locomotive under this lease, or their use, whether the liability is based on contract, warranty, tort (including negligence) or otherwise.
- 10.2 In no case, whether liability arises under breach of contract, warranty, tort (including negligence) or otherwise, shall Lessor's liability include any special, incidental, indirect or consequential damages including, but not limited to, loss of revenue or profits, damage to freight, loss of use of any equipment, cost of capital, downtime costs, or claims of Lessee's customers for such damages.
- 10.3 The provisions of 10.1 and 10.2 above shall not apply to claims for personal injury (including death) or property damage to the extent such injury or damage are directly caused by Lessor's negligence including, but not limited to, latent defects in the Locomotives and design defects with respect to the Locomotives.

11.0 Title, Identification, Recording

- 11.1 At all times during the continuance of this Lease title to the Locomotives shall remain in Lessor, and delivery of the Locomotives to Lessee, its assigns or successors, and Lessee's possession of the Locomotives, shall constitute a lending or bailment for hire. No right, title or interest in the Locomotives will vest in Lessee by reason of this Lease or by reason of the delivery to or use by Lessee of the Locomotives, except the right to use the Locomotives in accordance with the terms of this Lease. Lessee will take all actions necessary to protect Lessor's rights, interest and title in the Locomotives, and will take no action inconsistent with that obligation.
- 11.2 Prior to delivery of the Locomotives by Lessor to Lessee, the Lessor shall cause to be plainly, distinctly and conspicuously marked on each side of the Locomotives, at Lessor's expense, the following legend:

GENERAL ELECTRIC COMPANY
OWNER, LESSOR
LEASE FILED WITH ICC

Lessee shall not permit such legend to be removed or altered and in the event such words are removed, defaced or destroyed, Lessee shall immediately replace or cause such legend to be replaced at its expense. Lessee will not allow the name of any persons, association or corporation to be placed on the Locomotives as a designation that might be interpreted as a claim of ownership; but the Locomotives may be lettered with the names or initials or other insignia customarily used by the Lessee on its equipment of the same or a similar type for convenience of identification of the rights to use and operate the Locomotives under this Lease.

- 11.3 Lessor may, at its option, cause this Lease to be duly filed, registered or recorded in conformity with Section 11303 of the Interstate Commerce Act or other places within or without the United States as Lessor may reasonably request for the protection of its title. Lessee shall from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record any and all further instruments or reasonably requested by Lessor for the purpose of protecting Lessor's title to the Locomotives.

12.0 Assignment

Lessee shall not assign, transfer or encumber this Lease or any interest therein or any right granted hereunder without the prior written consent of Lessor, and it is agreed that any such transfer, assignment or encumbrance, whether voluntary, by operation of law, or otherwise, without such prior written consent, shall be void and shall, at the option of Lessor, terminate this Lease.

13.0 Default

- 13.1 If Lessee breaches or is in default of any material provision of this Lease and such breach or default is not cured within two (2) calendar days after written notice specifying such breach or default has been given pursuant to the provisions of this Lease, then Lessor, at its option, may, without prejudice to any other rights or remedies it may have under this Lease, at law or in equity, (a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover

damages for the breach thereof; (b) terminate this Lease immediately, (c) do either of the foregoing.

- 13.2 The remedies and powers in this Lease provided in favor of Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies and powers in its favor existing at law or in equity and each and every remedy and power may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by Lessor. Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law. No delay or omission of Lessor in the exercise of any remedy or power, no granting of an extension of time for the making of any payment due hereunder or other indulgence and no exercise of any remedy or power shall impair any such remedy or power or the rights under this Lease or shall constitute a waiver of any breach or default or an acquiescence therein. In the event that Lessor shall bring suit and be entitled to judgment hereunder, then Lessor shall be entitled to recover reasonable expenses, including attorneys' fees and the amount thereof shall be included in such judgment.

14.0 Term

- 14.1 The term of this Lease shall commence upon delivery of the Locomotives described in Annex 1 and shall terminate on April 29, 1989, unless sooner terminated by either of the parties hereto at any time upon the giving of not less than two (2) calendar days advance notice, or for default or event of loss as described in Sections 13 and 8 respectively. Immediately upon termination Lessee shall return the Locomotives to Lessor in good repair and operating condition, reasonable wear and tear excepted, at the same point at which delivery to Lessee was made pursuant to Section 2.0 above.
- 14.2 It is understood and agreed that any termination will not relieve either party of any obligation arising prior to or upon such termination, including but not limited to the obligations of Lessee under Sections 8, 9, 11 and 13, and any obligation to pay any sums due and owing to Lessor at the time of any such termination or as a result of any such termination.

15.0 General

15.1 Notice

All notices required or permitted hereunder shall be in writing and shall be deemed duly given when personally delivered or sent by registered or certified mail, return receipt requested, postage prepaid, or by cable confirmed by letter as aforesaid, as follows:

To Lessee: Buffalo & Pittsburgh Railroad Company Inc.
201 North Penn Street
Punxsutawney, PA 15767
ATTN: John Bell

Vice President and General Manager
To Lessor: General Electric Company
2901 East Lake Road
Erie, PA 16531
ATTN: James A. Stoddart

Manager-New Locomotive Venture
or to such other address as either party may hereafter designate in writing by like notice.

15.2 Execution in Counterparts

This Lease may be executed simultaneously in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument.

15.3 Applicable Law

Except insofar as Federal law may be applicable, the terms and conditions of this instrument and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania (including but not limited to the Uniform Obligations Act) but Lessor shall be entitled to such additional rights arising out of the filing or recording hereof, as shall be conferred by the laws of any jurisdiction in which the Lease or any such assignment shall be filed or recorded.

15.4 Entire Agreement

Except as otherwise specified herein, this Lease contains the entire and only agreement between the parties concerning the subject matter hereof, and there are merged herein all prior and collateral representations, promises or conditions in connection with the subject matter hereof, and any representation, promise or condition not incorporated herein and made a part hereof shall not be binding upon either party. No modification, renewal, extension, termination or waiver of this Lease or any of the provisions herein contained shall be binding upon either party unless made in writing by a duly authorized representative of each party.

WHEREFORE, the parties hereto, intending to be legally bound hereby, have executed this Lease as of the date first written above.


BUFFALO & PITTSBURGH RAILROAD
COMPANY INC.

By 
John Bell

Title Vice President and General Manager

Date 4/15/89

GENERAL ELECTRIC COMPANY

By 
W. S. Butler

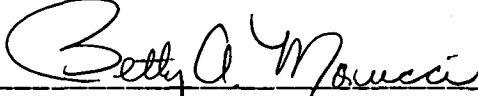
Title General Manager -
Transportation Systems
Marketing and Sales Department

Date 4/13/89

Annex 1 - Locomotive Description

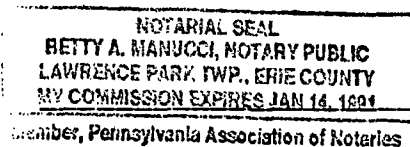
COMMONWEALTH OF PENNSYLVANIA)
 : SS.
COUNTY OF ERIE)

On this 13th day of April, 1989, before me personally appeared W. S. Butler, to me personally known, who, being by me duly sworn, did say that he is a General Manager of General Electric Company, that the instrument was signed on behalf of such corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.



Notary Public

My commission expires:

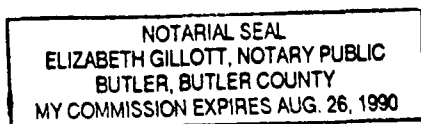


COMMONWEALTH OF PENNSYLVANIA)
 : ss.
COUNTY OF)

On this 15th day of April, 1989, before me personally appeared
JOHN BELL, to me personally known, who, being by me
duly sworn, did say that he is Vice President and General Manager of
the Buffalo & Pittsburgh Railroad Company Inc., that the instrument
was signed on behalf of such corporation by authority of its Board of
Directors, and he acknowledged that the execution of the foregoing
instrument was the free act and deed of such corporation.


Notary Public

My commission expires:



Member, Pennsylvania Association of Notaries

ANNEX 1

Type and Builder's Specification: Super 7 B-23 Diesel Electric Locomotive

Delivery Point: Butler, PA

Quantity: 1

Lessor's Identification Nos.: GECX 2000